

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Application of BellSouth Corporation)
Pursuant to Section 271 of the)
Telecommunications Act of 1934,)
To Provide In-Region, InterLATA Services)
In Alabama, Kentucky, Mississippi, North)
Carolina, and South Carolina)
)

WC Docket No. 02-150

**BELLSOUTH CORPORATION'S RESPONSE TO
MOTION OF AT&T CORP FOR EMERGENCY RELIEF**

AT&T's Motion for Emergency Relief presents neither an emergency nor a credible case for relief. AT&T takes baseless assumptions to advocate an analysis that BellSouth has "provided" or "marketed" interLATA service prior to authorization, and thus has gotten a "jumpstart" on long distance entry. As our discussion below demonstrates, it is AT&T that has jumpstarted supposition over fact. Accordingly, its motion should be denied.

As the Commission and AT&T know, BellSouth, instead of using the content of a BellSouth Complete Choice® service promotion, mistakenly substituted the content of a long-distance "buckslip" designed for use with Georgia and Louisiana customers, and mailed the incorrect buckslip to customers in other states. As AT&T concedes, the buckslip contains this statement: "Available to BellSouth customers in Georgia and Louisiana only".

As BellSouth's filings with the Commission show, the buckslips were part of a mailing that primarily promoted BellSouth's DSL high-speed Internet access service. BellSouth successfully executed a general market promotion in late May, using the long distance buckslips

in 822,000 DSL packages mailed to Georgia and Louisiana customers, and using a Complete Choice® buckslip in 1.1 million DSL packages mailed to customers in other states.

Understandably, the two promotions used different toll free numbers for receiving inquiries about the services.

BellSouth's mistake occurred in a late July/early August mailing directed to Hispanic customers that was designed to essentially replicate the promotion bilingually. Unfortunately, the content of the Georgia/Louisiana long distance buckslip was substituted for the Complete Choice® content in 130,000 DSL packages mailed to the other states. The mistake was and is embarrassing because it effectively told those customers that BellSouth had a long distance service that was unavailable to them.

Despite its concession that the buckslip contains language¹ precluding BellSouth's offering long distance to these customers, AT&T embarks on an analysis based entirely on its perception of appearances. AT&T states:

“...it appears that BellSouth marketed long distance services both to residents in States where BellSouth is currently seeking (but has not obtained) long distance authority and in States where BellSouth has neither received nor is seeking long distance authority.” AT&T Motion at 2.

Using this singular “appearance”, AT&T concludes that BellSouth is engaged in “unlawful marketing”, “serious violations” of sections 271 and 272, and that its behavior is “egregious” and “cavalier”. AT&T's extrapolation does not explain, nor can it, how a document that describes a service as “available only to BellSouth customers in Georgia and Louisiana” can market or provide that service to customers elsewhere.

¹ AT&T describes the notice as “very tiny” (Motion at 3). AT&T presumably does not contest its legal validity, however, given its own use of the same format. *See* Exhibit A.

AT&T uses “appearance” logic a second time in concluding that BellSouth intended to mail the buckslip to customers in states other than Georgia and Louisiana. After noting that the buckslip for Georgia and Louisiana and the other states contained different toll free phone numbers, AT&T jumps to the conclusion that BellSouth “appears” to have made “an intentional effort” to market long distance in those states. Such cynical reasoning is sadly typical of AT&T’s behavior in our 271 dockets, and is contrary to fact. BellSouth clearly intended to promote its Complete Choice® offering, not describe a long distance service unavailable to the customers who received the description.

The context is telling. BellSouth had successfully executed the effort to market long distance in Georgia and Louisiana while marketing Complete Choice® in the other states during its late May DSL promotion. Clearly, the late July/early August promotion was an attempt to replicate that activity with another segment of customers. In addition, the code on the mistaken buckslip is HSPCCBK (Hispanic Complete Choice® buckslip), while the correct buckslip for Georgia and Louisiana is HSPLDBK (Hispanic long distance buckslip), another clear indication that BellSouth intended a Complete Choice® buckslip for the other states. Together, these facts explain why there is a different toll free number for the promotion.

Against these facts, there can be no fair conclusion that BellSouth has “provided” or “marketed” long distance prior to authorizations or gained a “jumpstart” on long distance relief. There simply is no competitive advantage to be gained in mailing a long distance buckslip to customers who cannot subscribe to the service. To the contrary, the mistake is a wasted expense. The wasted expense is compounded because BellSouth disabled the toll free number, meaning that it was depriving itself of potential DSL sales. Finally, the wasted expense is also

compounded by the expense of sending another mailer that apologizes for the original error.²

These facts stand in sharp contrast to the facts before the Commission in its seminal case defining “provide”. AT&T, et al. v. Ameritech, et al., File Nos. E-98-41, E-98-42, E-98-43 (“*Qwest Teaming Order*”) There, Qwest (at the time, not a BOC) and two BOCs engaged in deliberate marketing of the BOCs’ local services coupled with Qwest long distance service. The Commission found that the BOCs were attempting to create a “one-stop shop” package prior to obtaining relief. Service representatives of both BOCs explicitly recommended Qwest to their respective customers, and took orders for Qwest service, and enabled the provisioning of Qwest service to those customers. BellSouth, by contrast, mistakenly substituted long distance content for Complete Choice® content in a targeted buckslip, specifically told customers that the service was available only to BellSouth customers in Georgia and Louisiana, and disabled the number for customers to call. We are in the process of mailing an explanation apologizing for the original error. This is hardly a “jumpstart” that enables BellSouth to obtain a competitive advantage, or that reduces its incentive to cooperate in opening its local markets. *See Qwest Teaming Order*, ¶ 37.

The remainder of AT&T’s Motion asks the Commission to gather facts, conduct an investigation and order a suspension or outright denial of BellSouth’s pending 271 application. Most of the facts that AT&T would have the Commission gather are contained in filings BellSouth has already made, and BellSouth has already taken much of the corrective action requested by AT&T’s Motion.³ In addition to disabling the toll free number and mailing a correction and apology to our customers, we are retraining our advertising personnel on the requirements of section 272.

² See BellSouth ex parte filed August 23, 2002 (attached).

³ Id.

CONCLUSION

Having failed to credibly refute BellSouth's showing that it complies with the requirements of the 271 competitive checklist, AT&T's Motion grasps at the straw of a BellSouth mailing mistake. While BellSouth is embarrassed and regrets the mistake, the facts compel a conclusion that BellSouth has not provided or marketed long distance. AT&T's Motion must therefore be denied.

Respectfully submitted,

BELLSOUTH CORPORATION

By: /s/Lisa Foshee

James G. Harralson

Lisa Foshee

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Its Attorneys

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404 335 0754 (telephone)

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August 23, 2002



ATTACHMENT A

Marketing Manager
AT&T Consumer Residential Services

August 8, 2002

Dear [REDACTED]

It always bothers me to lose a good customer. That's what compelled me to write.

Not long ago, you decided to discontinue your AT&T Residential Long Distance Service. I'd personally like to ask you to reconsider.

If you left AT&T for better rates, there's something you should know. Thousands of people who leave AT&T switch back within six months. The fact is, calling plan rates among major long distance companies are competitive. But, with AT&T, you get the added value of quality service and more than 100 years of long distance experience.

With AT&T One Rate® 10¢ you pay no monthly plan fee. And, all your state-to-state calls from home are just 10¢ a minute every day of the week, no matter what time you call (in-state rates may be higher).* You never need to watch the clock or wait until the rates go down. With one flat rate all day, every day, and no expensive plan fee, saving on long distance calls just doesn't get any simpler.

Simply sign and cash your check by 9/7/02 — it's yours to spend as you please. Or call 1 888 824-3892, ext. 19291, today. Either way, we'll switch you to AT&T Residential Long Distance Service and automatically enroll you in AT&T One Rate 10¢.

You're very important to us. And I hope with this offer I'll have the opportunity to welcome you back again as one of our most valued customers.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Mulvaney".

Marketing Manager, AT&T Consumer Residential Services

P.S. To switch to AT&T and take advantage of this great 10¢-a-minute offer, just cash your \$20 check.

* Subject to billing availability. You must be an AT&T Residential Long Distance subscriber to receive the AT&T One Rate 10¢ state-to-state and applicable in-state rate. Enrollment expires 11/15/02. A \$5.00 monthly minimum usage charge applies to this plan. Universal Connectivity Charge applies. An In-State Connection Fee applies to subscribers in certain states. State charges may also apply. For more details about these charges and to learn if the In-State Connection Fee applies in your state, please call 1 888 824-3892, ext. 19291.

Your AT&T Residential Service Agreement

Your signing, cashing, and/or depositing of this check authorizes AT&T to process your order, notify your local telephone company of your decision to switch to AT&T Residential Long Distance Service and, where applicable, to unblock carrier choice service protection to make this switch possible.

In CA, CT, and IN, confirmation of your request to switch to AT&T is required before your order is processed. You will either be transferred to or receive a call from an independent verifier to confirm your order.

Only one long distance service carrier may be designated for the telephone number listed on the front of this check, and your selection of AT&T for this service will apply only to that number.

Your local telephone company may charge you a fee(s) to switch your long distance service.

If you have recently accepted another offer to switch to AT&T, we can fulfill only on the first response received.

BellSouth Corporation
Legal Department
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Washington, DC 20036-3351

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Jonathan Banks
General Attorney

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August 23, 2002

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 02-150

Dear Mr. Dortch:

BellSouth described its inadvertent mailing of a "buckslip" concerning its long distance service to approximately 130,000 subscribers outside of Georgia and Louisiana in ex partes dated August 8 and August 14.¹ As noted in those ex partes, each of the buckslips contained a standard note stating that BellSouth long distance service is available only to customers in Georgia and Louisiana. BellSouth quickly discovered the mailing error and disabled the tollfree number printed on the mistaken mailings. That toll free number was assigned to a group of Complete Choice© (a local calling package) representatives who were not part of any effort to sell long distance service.

This letter describes the training and other steps BellSouth had undertaken to ensure compliance with the statutes and regulations governing long distance service before that mailing went out. In addition, this letter describes the additional measures BellSouth has implemented to prevent the reoccurrence of a similar mistake. Those measures include retraining, additional legal review of long distance mailings, including the language describing where BellSouth long distance service is available in the body of the mailing text, and assigning a corporate officer to be specifically accountable for the proper execution of long distance advertising plans.

¹ The long distance "buckslip" was mistakenly sent to a minimal number of consumers in each of the five states involved in this proceeding: 3,300 in Tennessee, 3,500 in Alabama, 800 in Kentucky, 600 in Mississippi, 6,200 in North Carolina and 1,700 in South Carolina. BellSouth serves over 8 million access lines in those five states.

BellSouth has extensively trained its employees on compliance with the Telecommunications Act of 1996 in general and the long distance provisions of that Act in particular. Sales representatives are trained on the long distance prohibition in the Act and that they may only take orders for BellSouth long distance service in states where BellSouth has received approval from the FCC. The employees involved in the mailing in question have been through training, but unfortunately mistakenly approved the mailing. BellSouth has strongly emphasized to those employees the gravity of the mistake.

In addition to training, particularly of retail sales representatives, BellSouth has instituted several checks to guard against the improper provisioning of long distance service. First, BellSouth's retail Operational Support Systems ("OSS") will not accept a service order that specifies BellSouth Long Distance ("BSLD") as the interLATA carrier in states where BellSouth has not received approval from the FCC to offer long distance service. Service orders improperly placed with a PIC change of 0377 (BellSouth Long Distance) elicit format errors and will not flow through BellSouth's OSS systems. If an order including a BSLD calling plan is submitted without using a PIC change, BellSouth's OSS system again elicits format errors, and the service order will not flow through. In addition, although BellSouth Long Distance's CIC code is generally loaded in BellSouth switches for testing purposes, that code is blocked except during particular testing windows. When the code is blocked, it is not available for long distance calling.

BellSouth has instituted additional safeguards against inadvertent communications concerning its long distance service. BellSouth will maintain these safeguards in place until it is authorized to provide long distance service in all nine states in its region. First, BellSouth has retrained personnel in the advertising group. Second, BellSouth has instituted an additional check on all promotional mailings concerning BellSouth long distance services. That check occurs after final proofs of the materials are received from the printer. At that time, the proofs and the mailing plan are reviewed by the Vice President & Associate General Counsel - Regulatory and State Operations, or by a lawyer of his designation, to ensure that the correct mail pieces are matched to the correct mailing plan. This additional process step directly addresses the mistake that occurred, and should prevent any reoccurrence. No promotional mailings concerning BellSouth long distance will go out until this legal review is completed.

Second, BellSouth has also designated a corporate officer, William Pate, Vice-President of Advertising and Public Relations, to be specifically responsible for the proper execution of long distance promotional mailings. As a final added precaution, BellSouth will include a statement setting out the states where BellSouth's offering of long distance service has been approved (or has not been approved) by the FCC in the body of mailings concerning its long distance service.

Ms. Marlene H. Dortch
August 23, 2002
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BellSouth has mailed the retraction letter discussed in its earlier ex parte. BellSouth deeply regrets this mailing mistake and especially any inconvenience it has caused the customers who received the mailing.

In accordance with Commission rules, I am filing copies of this notice and request that it be included in the record of the proceeding identified above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jon Banks", with a long horizontal flourish extending to the right.

~~Jonathan B. Banks~~

cc: Michelle Carey
Aaron Goldberger
Susan Pié
James Davis-Smith

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...
BellSouth Corporation
...and Thank You for Your Comments**

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updated 02/11/02

CERTIFICATE OF SERVICE

I hereby certify that I have this ____ day of August, 2002, served the following parties to this action with a copy of the foregoing **RESPONSE OF BELLSOUTH CORPORATION TO MOTION OF AT&T CORP. FOR EMERGENCY RELIEF** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties on the service list below.

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/s/Nelle Williams

Date: _____